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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
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| Review of the Commission's |) | MM Docket No. 94-150 |
| Regulations Governing Attribution |) | |
| of Broadcast Interests |) | |
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| Review of the Commission's |) | MM Docket No. 92-51 |
| Regulations and Policies |) | |
| Affecting Investment |) | |
| in the Broadcast Industry |) | |
| |) | |
| Reexamination of the Commission's |) | MM Docket No. 87-154 |
| Cross-Interest Policy |) | |

REPLY COMMENTS OF CBS INC.

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REPLY COMMENTS OF CBS INC.

CBS Inc. ("CBS"), by its attorneys, hereby submits these Reply Comments in the above proceedings, in which the Commission has undertaken review of its ownership attribution rules, its cross-interest policy, and its related policies affecting investment in the broadcast industry. We confine these Reply Comments to brief observations regarding the views expressed by various commenters on the single majority shareholder exemption.

The comments submitted in this proceeding demonstrate strong and broad support for retention of the single majority shareholder exemption and confirm that, as intended by the Commission,¹ the exemption has benefitted a wide range of companies. According to a number of

¹ See Report and Order In the Matter of Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and

commenters speaking from their own experience, the exemption has had a very positive effect on the ability of single majority shareholders to attract investors, enabled minority broadcasters to acquire broadcast stations, and facilitated the creation of four new cable networks.² While the benefits of the rule to the industry are thus amply documented, there has been no countervailing history of significant abuse of the exemption.

Elimination of the exemption is advocated by a lone commenter, AFLAC Broadcast Group, Inc. ("AFLAC"), a single majority shareholder which owns and operates television stations affiliated with each of the three original networks. Without providing any analysis, AFLAC contends that minority shareholders can wield "significant influence" over licensees notwithstanding the existence of a single majority shareholder. As anecdotal evidence of this proposition, AFLAC alludes to discussions between AFLAC and CBS regarding a proposal to form a joint venture or company to be owned 51 percent by AFLAC and 49 percent by CBS.³

Newspaper Entities, MM Docket No. 83-46, 97 FCC 2d 997, 1008 at ¶¶ 19, 21 (1984) ("Attribution Order"), recon. granted in part, 58 RR2d 604 (1985), further recon. granted in part, 1 FCC Rcd 802 (1986).

² See Comments of EZ Communications, Inc., MM Docket No. 94-150 et al. (filed May 17, 1995) ("EZ Comments") at 2; Comments of Qwest Broadcasting L.L.C., MM Docket No. 94-150 et al. (filed May 17, 1995) ("Qwest Comments") at 1-3; Comments of Turner Broadcasting System, Inc., MM Docket No. 94-150 et al. (filed May 17, 1995) ("Turner Comments") at 9-12.

³ Consolidated Comments of AFLAC Broadcast Group, Inc., MM Docket No. 94-150 et al. (filed May 17, 1995) ("AFLAC Comments") at 16. Since AFLAC's comments may be read to imply that CBS pressed for the creation of such a venture, CBS feels obliged to clarify the record. In late 1994, AFLAC advised CBS of its interest in acquiring a television station which it believed would soon become available in a market larger than those in which AFLAC currently operates stations. AFLAC sought a capital contribution which would reduce its outlay in acquiring control of the station. In the course of brief and highly preliminary discussions between AFLAC and CBS on this matter, AFLAC submitted a proposal for a joint venture, intended initially to acquire that
(continued...)

Ironically, as noted in the margin, such discussions as did occur on this subject between AFLAC and CBS were driven primarily by AFLAC's interest in obtaining capital from CBS to acquire and operate a television station. Although AFLAC characterizes the venture it discussed with CBS as a means by which CBS could "extend its influence and reach while avoiding attribution,"⁴ it fails to acknowledge its own motivation in pursuing discussions of the proposed venture or the advantages it perceived for itself.

In any event, the conclusion AFLAC draws from these discussions is that "even when there is a single majority shareholder, the minority interest should be analyzed and attributed as it would be in the absence of a single majority shareholder."⁵ AFLAC's dealings with CBS regarding a possible joint venture are in fact an argument for, not against, retention of the single majority shareholder exemption, aptly illustrating the proposition that what the exemption does is afford to companies with a single majority shareholder an opportunity to attract investment which would be unavailable were minority holdings attributable. Thus, companies such as EZ Communications, which has determined that investment from minority shareholders is in its interest,⁶ are able to utilize the exemption to obtain capital. Similarly, when AFLAC believed that investment by CBS might enable it to achieve a presence in a market larger than those in which it

³(...continued)

station, of which AFLAC would own 55 percent of the voting and economic interests and CBS 45 percent, and of which AFLAC would have management control. Shortly thereafter, it became clear that the television station which AFLAC was interested in acquiring would not become available for purchase, and discussions on this matter were discontinued.

⁴ Ibid.

⁵ Id. at 17.

⁶ EZ Comments at 2.

currently owns stations, it considered making use of the exemption. Nothing prevents a single majority shareholder company from refraining from utilizing the exemption, as AFLAC did once it determined that it no longer had an interest which could be advanced by a joint venture.

AFLAC's argument appears to rest in large part on its belief that minority investments involving affiliation agreements reflect "substantial influence" by the investor over the conduct of the licensee.⁷ A similar view has been advanced by the Network Affiliated Stations Alliance, which does not propose elimination of the single majority shareholder exemption, but asserts that minority interests held by networks have "substantially the same consequences as a controlling ownership interest," and points to long-term affiliation agreements as evidence of network influence.⁸ The Commission has unequivocally rejected this position. Less than two months ago, the Commission reiterated that:

⁷ AFLAC offers as another example of "potential abuse" NBC's 49 percent interest in WKC-TV in Cleveland, which "is not attributable under the Commission's rules, even though NBC also provides 18 hours of programming per day to that station." AFLAC Comments at 18.

⁸ Comments of the Network Affiliated Stations Alliance ("NASA"), MM Docket Nos. 91-221, 87-8, and 94-150 (filed May 17, 1995) ("NASA Comments") at 10-11. In its comments, filed both in this proceeding and in the Commission's pending consolidated proceeding on its television station ownership rules, NASA's primary contention is that the 25 percent ceiling on aggregate audience reach embodied in the current national multiple ownership rules, 47 C.F.R. §73.3555(e), should be maintained in order to inhibit the growth of network companies. In the course of asserting this position, NASA contends that the current attribution rules permit networks to acquire "'hidden' ownership interests" which confer "unrecognized market power." Id. at 9. CBS has responded to NASA's views regarding the proposed modification of the ownership rules in our comments in the proceeding relating to those rules. See Comments of CBS Inc., MM Docket Nos. 91-221 and 87-8 (filed May 17, 1995); Reply Comments of CBS Inc., MM Docket Nos. 91-221 and 87-8 (filed June 19, 1995). We respond in these comments to NASA's theory respecting the attribution rules. We underscore our view, expressed in our initial comments in this proceeding, that the attribution rules and the ownership rules involve different policies, raise analytically different issues, and should be considered on their own merits. See Comments of CBS Inc., MM Docket Nos. 94-150, 92-51, and 87-154 (filed May 17, 1995) at 2, n.4.

merely entering into an affiliation agreement with a network which is also an equity partner does not, without more, establish an attributable interest, let alone control.⁹

Investments securing affiliation agreements with single majority shareholder companies are simply one method of accomplishing an objective that is clearly permissible under the Commission's rules. Networks are also free to assure themselves affiliations by offering generous compensation to licensees -- as they have done in droves in the wake of the recent series of affiliation realignments occasioned by the agreement between Fox Television Stations and New World Communication Group announced in May 1994.¹⁰ There is no principled basis for distinguishing between an affiliation secured through a minority shareholder equity investment and one secured through compensation payments. In fact, by investing in a company with a single majority shareholder, the minority investor incurs greater risk than is necessary to achieve the goal of affiliation.

Nor is it significant that long-term affiliations may be secured through such minority investments. Six years ago, the Commission revoked its rule limiting the duration of affiliation agreements.¹¹ At that time, the Commission found it in the public interest to allow networks and

⁹ BBC License Subsidiary L.P., FCC 95-179, at ¶ 39 (rel. April 27, 1995) (citing NBC, Inc., 6 FCC Rcd 4882 (1991)).

¹⁰ As part of that agreement, New World agreed to change the affiliations of twelve television stations it owned or was to acquire from one of the three original networks to the Fox network. The affiliation changes precipitated by the Fox/New World agreement have reportedly resulted in increased compensation payments by the three original networks to their affiliates of at least \$200 million. "CBS's Tony Malara: In the Storm of the Eye," Broadcasting & Cable, December 19, 1994 at 34.

¹¹ Report and Order In the Matter of Review of Rules and Policies Concerning Network Broadcasting by Television Stations: Elimination or Modification of Section 73.658(c) of the
(continued...)

stations "to reach their own balance as to what term of affiliation should be agreed upon."¹²

Noting that strengthened network-affiliate relationships were increasingly necessary "to respond to the competition from new technologies,"¹³ the Commission expressed support for fostering "a more stable system of affiliates," which longer term agreements might promote. It also rejected the notion that existing networks could at that time or in the future foreclose the emergence of new networks.¹⁴ The experience of the subsequent six years, during which affiliation agreements have been subject to no time limitations, has conclusively vindicated the Commission's view that affording to networks and stations the discretion to enter long-term agreements is compatible with a competitive environment in which new networks can emerge and stations can thrive. In sum, the considerations that convinced the Commission to eliminate its two-year limit on affiliation agreements constitute an equally compelling rationale for concluding that the single majority shareholder exemption is beneficial to network-affiliate relationships. As stated by the Commission:

[W]e believe there is considerable public benefit in acting to facilitate those developments that will assist existing affiliates and networks in synchronizing their economic and competitive interests and will aid their effective participation in the increasingly diverse and competitive video marketplace of the future ... The efficiency and responsiveness of [networking] operations depends ... on a partnership between the network and its numerous affiliates. The additional flexibility provided by the elimination of the two-year rule should, we believe, be of some assistance

¹¹(...continued)

Commission's Rules, MM Docket No. 88-396, 66 RR 2d 190 (1989).

¹² Id. at ¶ 12.

¹³ Id. at ¶¶ 16-17.

¹⁴ Id. at ¶¶ 20.

to networks and their affiliates in assuring that this partnership functions effectively.¹⁵

The single majority shareholder exemption similarly provides useful flexibility to networks and affiliates in structuring their relationships to compete effectively in the marketplace.

AFLAC also urges that the exemption should be eliminated because, in some cases, minority stock ownership is only one element of "various business and other relationships" between majority and minority stockholders, the sum total of which purportedly confers substantial influence over the licensee on the minority stockholder.¹⁶ This argument calls for a radical solution to what is, at most, a minor problem that the Commission has more appropriate means to address. As thoroughly discussed by CBS and other commenters, the Commission has the capability to evaluate special circumstances to determine whether a combination of factors might lead to an ability to exercise significant influence or control. Rather than eliminate a rule that has significantly benefitted the industry, the Commission should continue to handle exceptional situations on the case-by-case basis it has utilized in the past.¹⁷

Conclusion

As reflected in the overwhelming support expressed in the comments filed in this proceeding, the single majority shareholder exemption has been of significant utility to the

¹⁵ Id. at ¶ 13.

¹⁶ AFLAC Comments at 17-18.

¹⁷ See, e.g., BBC License Subsidiary L.P., *supra*, at ¶ 42 (citing KKR Associates, 2 FCC Rcd. 7104, 7107 (1987)).

industry. It has facilitated investment and promoted activities deemed by the Commission to be in the public interest. The exemption should be retained in its current form.

Respectfully submitted,

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